

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of the Office of Financial and Insurance Services

In the matter of:

**Land Equity 2, L.L.C.
Land Equity Management, Inc.
Bruce A. Bush
Matthew J. Fox
William W. Deneau
Thomas W. Tucker**

Enforcement Case No. 06-4863

Respondents

_____ /

Issued and entered
on October 17, 2007
Peggy L. Bryson
Acting Chief Deputy Commissioner

CONSENT ORDER AND STIPULATION

A. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The staff of the Office of Financial and Insurance Services ("OFIS") alleges that the following facts are true and correct:

1. On April 17, 2007, OFIS issued an Order to Cease and Desist against the above listed Respondents and Robert M. Smart. On May 9, 2007, the Respondents requested a hearing on the Order to Cease and Desist. This Consent Order and Stipulation resolves the Respondents' dispute with the April 17, 2007 Order to Cease and Desist.
2. Robert M. Smart did not request a hearing on the April 17, 2007 Order to Cease and Desist. The terms of this Consent Order and Stipulation do not apply to Robert M. Smart. The terms of the April 17, 2007 Order to Cease and Desist remain in effect for Robert M. Smart.
3. Land Equity 2, LLC ("Land Equity"), is a Michigan limited liability company formed on October 7, 2002.

4. The registered office address for Land Equity is: 1059 Sunset Hills Ct. NW, Grand Rapids, MI 49534.
5. Land Equity's principal business is to invest capital in residential development.
6. The manager of Land Equity is Land Equity Management, Inc. ("LEM"), a Michigan corporation with a mailing address of: P.O. Box 141396, Grand Rapids, MI 49514.
7. The personnel of LEM includes the following:
 - Bruce A. Bush, President
 - Matthew J. Fox, Vice President, Secretary and Treasurer
 - William W. Deneau, Director
 - Thomas W. Tucker, Director
 - Robert M. Smart, Marketing Director

Land Equity, LEM, Bruce A. Bush, Matthew J. Fox, William W. Deneau, and Thomas W. Tucker are hereafter collectively referred to as ("Respondents.")

8. OFIS is responsible for the licensing and regulation of securities and enforcement of the provisions of the Michigan Uniform Securities Act of 1964, ("Act") as amended, MCL 451.501 et. seq.
9. On April 25, 2006, via certified mail, OFIS sent a letter to the Respondent Land Equity and LEM concerning their business transactions.
10. On June 5, 2006, Respondent Mark J. Fox responded on behalf of Land Equity and LEM, that between July 16, 2004 and December 27, 2004, \$1,180,000.00 in membership interests was sold in Land Equity to eleven investors.
11. Section 301 of the Act, MCL 451.701, provides that it is unlawful for any person to offer or sell any security in this state unless 1 of the following is met:
 - a. It is registered under the Act.
 - b. The Security or transaction is exempted under Section 402 of the Act, or
 - c. The security is a federally covered security.
12. Respondent Mark J. Fox acknowledged that the sales were not registered and asserted that the sales were exempt pursuant to Section 402 of the Act, MCL 451.802, because they were only sold to accredited investors.
13. Respondents knew or had reason to know that pursuant to Michigan's accredited investor exemption, Section 402(b)(9)(D)(5) of the Act, MCL 451.802(b)(9)(D)(5), there are three offering prerequisites, as listed in Section 402(b)(9)(A-C) of the Act, MCL 451.802(b)(9)(A-C) for reliance on the Section 402(b)(9) exemption.
14. One such prerequisite, Section 402(b)(9)(C) of the Act, MCL 451.802(b)(9)(C) is that no commission can be paid or given directly or indirectly for soliciting any prospective

purchaser in this state, except to a broker-dealer registered pursuant to the Act who is not affiliated with the issuer or its affiliates.

15. Section 401 of the Act defines commission as any payment in cash, securities, or goods for offering or selling, promise, or commitment to provide payment in the future for offering or selling, or any other similar payment.
16. In this instance, Respondents failed to meet the prerequisite restricting commission payments.
17. LEM hired Robert M. Smart on August 6, 2004 pursuant to a Sales Representative Employment Agreement, ("Agreement.")
18. The Employment section of the Agreement states that: "The employee's general responsibilities shall include the solicitation of capital contributions from accredited investors and the identification of sources of capital for Land Equity."
19. Robert M. Smart's compensation is identified within the Compensation section of the Agreement as "a commission based on the gross amount of purchase price paid for units by accredited investors, and accepted by Land Equity under the Offering Memorandum, for which Employee was the procuring cause..."
20. The agreed upon commission was nine percent (9%) of the amount received by Land Equity from each accredited investor for the purchase of Interests.
21. The Termination Agreement between Respondent LEM and Robert M. Smart identifies that Robert M. Smart earned \$89,100.00 in commissions.
22. In correspondence dated, August 24, 2006, LEM acknowledged the compensation provided to Robert M. Smart.
23. Michigan's accredited investor exemption is not applicable when commissions are paid for soliciting prospective purchasers, except in instances involving a registered broker-dealer. None of the Respondents is a registered broker-dealer.
24. Respondents knew or should have known that Section 201(a) of the Act, MCL 451.601(a) states that a person shall not transact business as an agent in this state unless that person is registered.
25. An agent is defined as an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.
26. Robert M. Smart falls within the definition of an agent because he represented an issuer in attempting to effect purchases of securities pursuant to the description of his duties within the Sales Representative Employment Agreement.

27. Robert M. Smart was not registered as an agent during the time he was employed by LEM, August 2004 – December 2004.
28. Robert M. Smart does not meet either of the exclusions from the definition of an agent because a transaction exemption under Section 402(b) of the Act, MCL 451.802(b) was not perfected and Robert M. Smart received commission for soliciting investors.
29. Robert M. Smart acted as an unregistered agent for LEM in effecting purchases of interest in Land Equity, which is a violation of Section 201(a) of the Act, MCL 451.601(a).
30. The exemptions for individuals effecting transactions pursuant to Section 402(b) of the Act, MCL 451.802(b) are not applicable because Respondents failed to perfect the exemption provided in Section 402(b)(9) due to the payment of commissions to Robert M. Smart for soliciting investors in Land Equity.
31. Respondents knew or should have known that Section 201(b) of the Act, MCL 451.601(b), states that an issuer shall not employ an agent unless the agent is registered.
32. LEM employed Robert M. Smart to solicit capital contributions for Land Equity.
33. Robert M. Smart's activities pursuant to the Sales Representative Employment Agreement are within the definition of an agent.
34. Therefore, LEM employed Robert M. Smart as an unregistered agent in violation of Section 201(b) of the Act, MCL 451.601(b).

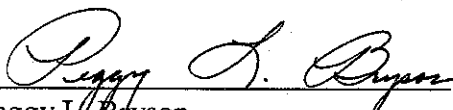
B. ORDER

Based on the findings of fact and conclusions of law above and Respondents' stipulation, it is **ORDERED** that:

1. Respondents shall immediately **CEASE AND DESIST** from violating Sections 201 and 301 of the Act, MCL 451.601, 451.701.
2. By October 29, 2007, Respondent LEM shall provide notice to all investors, whether individuals, business organizations, or other entities, that purchased an interest in Land Equity 2, LLC, informing them that these securities were not offered or sold in compliance with Section 301 of the Act, MCL 451.701. The notice shall further inform the investors that upon the investor's request and tender of the securities back to LEM, LEM will refund the consideration paid for such securities, together with costs and interest at the rate of 6% per year from the date of payment, less the amount of income received on the security, as provided by Section 410(a) of the Act, MCL 451.810(a). In the event that the investors no longer own the securities, LEM shall refund the amount that would be payable upon tender as set forth above, less the value of the security when

the investor disposed of it, together with interest at the rate of 6% per year from the date of disposition. The notice containing the rescission offer shall be accompanied by documents making full written disclosure about Land Equity's financial and business condition, and the financial and business risks associated with the retention of the securities. The notice must provide the investors at least thirty (30) days from the date of receipt in which to accept or reject the rescission offer. Upon the acceptance of the rescission offer and tender-back of the security by an investor, the Respondents shall remit any amount due and owing to the investors by December 21, 2007.

3. Respondents Bush, Fox, Deneau, and Tucker shall each pay a civil fine of One Thousand Dollars, (\$1,000.00) to the State of Michigan. Upon execution of this Order, OFIS will send Respondents an Invoice for the civil fine, which shall be due within 30 days of issuance of the Invoice.

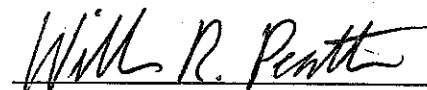

Peggy L. Bryson
Acting Chief Deputy Commissioner

Dated: 10/17/2007

C. STIPULATION

I have read and understand the consent order above. I agree that the Commissioner has jurisdiction and authority to issue this consent order pursuant to the Michigan Uniform Securities Act. I waive the right to a hearing in this matter if this consent order is issued. I understand that this stipulation and consent order will be presented to the Commissioner for approval and the Commissioner may or may not issue this consent order. I waive any objection to the Commissioner deciding this case following a hearing in the event the consent order is not approved. I admit the facts set forth in the above consent order and agree to the entry of this order.

The Office of Financial and Insurance Services staff approves this stipulation and recommends that the Commissioner issue the above consent order.



William R. Peattie
Staff Attorney

Dated: 10/17/07